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Bills and Notes--Negotiable Paper Under Seal--Necessity of Consideration

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RECENT CASE COMMENTS

BILLS AND NOTES — NEGOTIABLE PAPER UNDER SEAL — NECESSITY OF CONSIDERATION.—In an action between the original parties on a negotiable promissory note under seal, the defendant maker pleaded want of consideration as a defense. *Held*, the presumption of consideration raised by a seal upon a promissory note is rebuttable by showing want of consideration. *Citizens' Bank of Blakely v. Hall*.¹

This view is taken by most courts faced with the problem under the Negotiable Instruments Law,² the theory being that although a sealed instrument was not negotiable at common law, because it was a specialty,³ the instrument is negotiable paper under the uniform act,⁴ and "by statutory conversion loses its position and quality as a specialty to the extent of both its negotiable characteristics and of its validity or legal sufficiency as a negotiable instrument."⁵ Since it is a negotiable promissory note, Section 28 allows the defense of want of consideration against one not a holder in due course.⁶

The opposite result is reached, but without reference to the Negotiable Instruments Law by certain cases holding want or failure of consideration not to be a defense to a sealed promissory note,⁷ the reason being that if certain non-negotiable common law specialties are to be made negotiable by statute, a conclusive "presumption"⁸ of consideration would better aid negotiability than would a *prima facie* "presumption."⁹

In West Virginia it is said that a seal "imports" or "pre-

¹ 177 S. E. 496 (Ga. 1934).

² *St. Paul's Episcopal Church v. Fields*, 81 Conn. 670, 72 Atl. 145 (1909); *Citizens' National Bank v. Custis*, 153 Md. 235, 138 Atl. 261, 53 A. L. R. 1165 (1927); *Note* (1927) 26 MICH. L. REV. 208; *Note* (1920) 29 YALE L. J. 345.

³ *Ex parte First National Bank of Ozark*, 212 Ala. 274, 102 So. 371 (1924); *St. Paul's Episcopal Church v. Fields*, *supra* n. 2; *Laidley's Adm'r v. Bright's Adm'r*, 17 W. Va. 779 (1881).

⁴ W. VA. REV. CODE (1931) c. 46, art. 1, § 6: "The validity and negotiable character of an instrument are not affected by the fact that: . . . it (4) Bears a seal."

⁵ *Citizens' National Bank v. Custis*, *supra* n. 2.

⁶ W. VA. REV. CODE (1931) c. 46, art. 2, § 5: "Absence or failure of consideration is a matter of defense as against any person not a holder in due course . . ."

⁷ *Kennedy v. Collins*, 30 Del. 426, 108 Atl. 48 (1919); *Burriss v. Starr*, 165 N. C. 657, 81 S. E. 929 (1914).

⁸ See 1 WILLISTON, CONTRACTS (1920) § 217; "after the action of assumption had been developed, the somewhat unfortunate mode of expression became usual that a sealed instrument 'imported' a consideration. It would have been more accurate to have said that no consideration was needed for such a document."

⁹ *Note* (1927) 26 MICH. L. REV. 208.

sumes'' consideration.¹⁰ In actions on sealed promissory notes by the payee against the maker, the court has allowed the defense of failure of consideration to be interposed,¹¹ but indicates by way of dictum that want of consideration is not a defense¹² under the statute allowing equitable set-offs.¹³ These cases, however, were decided before the adoption of the uniform Negotiable Instruments Act, and the court has not since passed upon the question.

In some states, the effect of the seal on a promissory note is to confer upon such an instrument a longer period of limitation.¹⁴ In West Virginia, the statute provides for the same ten year period of limitation on both sealed and unsealed instruments.¹⁵

—HERSCHEL H. ROSE, JR.

CONSTITUTIONAL LAW — FREEDOM OF CONSCIENCE — COMPULSORY MILITARY TRAINING IN LAND GRANT COLLEGES.¹ — Plaintiffs alleged that their expulsion from the state university for refusal to enroll in the required course in military tactics abridges their religious freedom, as conscientious objectors to war, and impairs their liberty without due process of law. The appeal was denied. Mr. Justice Cardozo, concurring, pointed out the chaotic result which might obtain if, for example, a citizen could refuse to pay taxes for war purposes or any other object which might be condemned by his conscience and concluded, "One who is a martyr to a principle . . . does not prove by his martyrdom that he has

¹⁰ See *Bolyard v. Bolyard*, 79 W. Va. 554, 558, 91 S. E. 529 (1917); *National Valley Bank v. Houston*, 66 W. Va. 336, 66 S. E. 465 (1909).

¹¹ *Fisher v. Burdett*, 21 W. Va. 626 (1883).

¹² See *Williamson v. Cline*, 40 W. Va. 194, 206, 20 S. E. 917 (1895).

¹³ W. VA. REV. CODE (1931) c. 56, art. 5, § 5: "In any action on a contract, the defendant may file a plea alleging any such failure in the consideration of the contract, . . . as would entitle him either to recover damages at law from the plaintiff . . . ; or, if the contract be by deed, alleging any such matter existing before its execution, or any such mistake therein, or in the execution thereof, or any such other matter, as would entitle him to such relief in equity; . . ."

¹⁴ Note (1920) 29 YALE L. J. 345.

¹⁵ W. VA. REV. CODE (1931) c. 55, art. 2, § 6.

¹ See generally Martin, *The American Judiciary and Religious Liberty* (1928) 62 AM. LAW REV. 658; Hartogensis, *Denial of Equal Rights to Religious Minorities and Non-Believers in the United States* (1930) 39 YALE L. J. 659; Hoff, *Religious Freedom Under Our Constitutions* (1924) 31 W. VA. L. Q. 14; Reeder, *A Monograph on Religious Freedom* (1925) 31 W. VA. L. Q. 192; W. VA. CONST., art. III, §§ 10, 11 and 15.